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Nos. 180, 184

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In the Supreme Court of the United States

OCTOBER TERM, 1960

HARRY JOSEPH PAYNE, PETITIONER

v.

PAUL J. MADIGAN, WARDEN
UNITED STATES PENITENTIARY, ALCATRAZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

THOMAS E. YOUNG, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals in *Payne* (R. (180) 15–19)[1] is reported at 274 F. 2d 702 (C.A. 9).

[1] References to the record in *Payne* v. *Madigan*, No. 180, are prefixed "R. (180)"; and to Petitioner's Brief, "Pet. Br. (180)", followed by the appropriate page designations. References to

The opinion of the District Court for the Northern District of California (R. (180) 10–11) is not officially reported.

The opinion of the Court of Appeals in *Young* (R. (184) 31–36) is reported at 274 F. 2d 698 (C.A. 8). The opinion of the District Court (R. (184) 21–29) is reported at 174 F. Supp. 422 (D. N.D.).

JURISDICTION

The judgment of the Court of Appeals in *Payne* (R. (180) 20) was entered on January 19, 1960, and in *Young* (R. (184) 37), on February 11, 1960. A motion for leave to proceed *in forma pauperis* and a petition for a writ of certiorari were filed in *Payne* on February 5, 1960, and in *Young*, on March 1, 1960. The motions and petitions were granted on June 27, 1960 (363 U.S. 839; R. (180) 21; R. (184) 38). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the sentencing judges' oral pronouncements from the bench effectively imposed consecutive sentences and effectively disclosed the sequence in which the sentences were to be served.

2. Whether written Judgments and Commitments, signed by the sentencing judges on the same day as the sentences were orally pronounced, may serve the function of clarifying the intent of the sentencing

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the record in *Young* v. *United States*, No. 184, are prefixed "R. (184)", and to Petitioner's Brief, "Pet. Br. (184)", followed by the appropriate page designations.

courts as to the sequence in which the sentences imposed were to be served.

3. Whether insufficient specifications by the sentencing judges of the sequences in which consecutive sentences were to be served entitle petitioners to be discharged after serving the longest of the sentences imposed.

STATUTE AND RULES INVOLVED

28 U.S.C. 2243: * * *

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.
>
> * * * * *
>
> The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

Rule 8, F.R. Crim. P.:

> (a) *Joinder of Offenses.* Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Rule 32, F.R. Crim. P.:

> (a) *Sentence.* Sentence shall be imposed without unreasonable delay. Pending sentence

the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment.

(b) *Judgment.* A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

Rule 36, F.R. Crim. P.:

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Rule 43, F.R. Crim. P.:

The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence except as otherwise provided by these rules. * * *

Rule 58, F.R. Crim. P.:

The forms contained in the Appendix of Forms are illustrative and not mandatory.

STATEMENT

I. *Payne* v. *Madigan*, No. 180,

On March 16, 1956, petitioner, represented by counsel, appeared before the District Court for the Eastern District of Tennessee, Southern Division, for arraignment on seven informations and indictments (Criminal Case Nos. 10,676 through 10,682) charging various violations of the postal laws (R. (180) 5–7). Taking up the seven proceedings in numerical order, the judge received pleas of guilty in each proceeding (R. (180)6). After asserting that "it is quite a serious series of violations," and that "the maximum punishment would be 66 years and $33,000.00 fine," the judge said that petitioner would receive "much less" than the maximum, and told him that "when you have a series of cases you probably get off lighter per case than you would if on one case" (R. (180) 6–7). He then imposed sentence as follows (R. (180) 7–8):

> The first count of indictment No. 10,676 is a charge of first uttering and publishing as well as having in possession, that is probably two different things, anyway I am just putting one year in each count, concurrent.
>
> No. 10,677 is breaking into a post office at Champaign, Illinois, the second count is stealing the money orders at the time. So, I am just putting that as two years on the first count and one year on the other, making it concurrent or making two years for that charge.

No. 10,678 I will have to start back, 10,678 as I have it now is corrected. In that you are charged with breaking into the post office at Nunnelley, Tennessee, secondly, stealing property from the postal department, which I assume to be the same offense. And, 10,678, two years on the first count, one year on the second count, concurrent. That is the way I have got that.

Now, No. 10,679, is breaking in two different post offices, one at Hurricane Mills and the other one at Nunnally, the same thing. I have No. 10,679 as two years on the first count, and one year on the second count concurrent.

No. 10,680, is a one-count indictment, breaking into the postoffice at Dukedom, Weakley County, two years on that.

No. 10,681, is from the Eastern District of Wisconsin, cashing two money orders as I get it. One year on each count, concurrent.

And then the last No. 10,682, breaking and entering the postoffice building in the Western District of Missouri that is two years, and all the different indictments will be consecutive. Now, let's see, that is thirteen years, is that correct?

GEN:L [*sic*] MEEK [*the prosecuting attorney*]: I figure twelve.

Mr. THRASHER [defense counsel]: I figure twelve.

CLERK: Thirteen is right.

THE COURT: I figure fourteen. One as I say it was involving the same instance, I took off one.

Did you get it Mr. Thrasher? 10,676, one year; 10,677, two years; 10,678, two years;

10,679, two years; 10,680, two years, 10,681 is two years; 10,682 is two years, consecutive as to all cases.

GEN:L [*sic*] MEEK: No. 10,681, how is that?

THE COURT: It is two years. I believe that is reasonable sentence in view of all the depredations. I do not believe in unusually long terms, but that is a pretty good term. I could easily hike that up to twenty years. That satisfies me. It is my best judgment nd my conscience is satisfied. That will be the judgment of the Court.

Subsequently, but on the same day, the judge signed, and there were filed, seven documents, each entitled "Judgment and Commitment" and each in the form suggested in Form 25, Appendix Of Forms, F.R. Crim. P. (Appendix, *infra*, pp. 39–48).[2]

The Judgment and Commitment in Criminal Case No. 10,676 committed petitioner to the custody of the Attorney General for imprisonment for a period of

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[2] Although these documents were not part of the original record in *Payne*, they were considered by the Court of Appeals, the United States Attorney for the Eastern District of Tennessee having obtained them at the court's request. On December 29, 1960, each of these documents, with the exception of the Judgment and Commitment in No. 10,676, was certified as a part of the record by the clerk of the Court of Appeals. The clerk's office in the Court of Appeals has informed us that it is unable to locate the Judgment and Commitment in No. 10,676. We have contacted the clerk of the District Court for the Eastern District of Tennessee, who is preparing a certified copy which we will file with this Court upon receipt. Each of the Judgments and Commitments constituted the formal "judgment of conviction" referred to in Rule 32(b), F.R. Crim. P., and each is attached in the Appendix to this brief. *Infra*, pp. 39–48.

one year (Appendix, *infra,* pp. 39–40). The Judgment and Commitment in Criminal Case No. 10,677 committed petitioner for imprisonment for a period of two years "to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,676" (Appendix, *infra,* p. 41). Similarly, the Judgments and Commitments in Criminal Cases Nos. 10,678 through 10,682, inclusive, committed petitioner for imprisonment for periods of two, two, two, one, and two years, respectively. Each Judgment and Commitment provided that the sentence therein contained would commence at the expiration of the sentence imposed that day in the case immediately preceding it numerically (Appendix, *infra,* pp. 42, 44, 45, 47, 48). The Judgment and Commitment in No. 10,682, after so providing, stated: "* * * making an aggregate sentence of TWELVE (12) YEARS TO BE SERVED in the seven criminal cases" (Appendix, *infra,* p. 48).

On January 14, 1959—less than three years after his confinement to the Alcatraz penitentiary—petitioner filed with the District Court for the Northern District of California a petition for a writ of habeas corpus (R. (180) 3), in which he asserted that the "oral judgment is too indefinite, ambiguous and equivocal to sustain consecutive sentences" (R. (180) 3), and that he had "satisfied the legal portion of his sentence" and was entitled to be discharged from custody (R. (180) 4). The district court denied the petition (R. (180) 11), holding that it was clear from the record that the sentencing court "in its judgment directed that petitioner be confined consecutively on the

several indictments for a total sentence of 12 years" (R. (180) 10).

Upon appeal, the Court of Appeals for the Ninth Circuit affirmed, stating (R. (180) 18-19):

> The district court thought that the oral pronouncement indicated with sufficient clarity that the consecutive sentences were to be served in the same sequence as the numerical order of the cases. If this is so, then the written judgment and commitments are in complete conformity with the oral sentences.
>
> Had the oral sentences been imposed with regard to the counts of a single indictment or information, we would have no hesitancy in concurring in this determination by the district court. [Citing *United States* v. *Daugherty,* 269 U.S. 360; *Fleish* v. *Swope,* 9 Cir., 226 F. 2d 310]. But where, as here, the consecutive sentences pertain to six informations and an indictment, there is authority for the view that a more precise specification of the order of sentences must be indicated than is to be found in the instant oral sentences. [Citing *Puccinelli* v. *United States,* 9 Cir., 5 F. 2d 6; *United States* v. *Patterson,* C.C., 29 Fed. 775]
>
> In providing that more precise specification of the order of sentences, the written judgments and commitments entered herein did not depart from the oral pronouncements. At most they resolved an ambiguity. In the oral pronouncements it was indicated that the sentences were to be served consecutively. The manner in which the pronouncements were made indicates that a sequence of sentences corresponding to the numerical order of the cases was probably intended. The written judgments

and commitments, signed by the judge on the same day, confirm this inference. In our view written judgments and commitments may properly serve the function of resolving ambiguities in orally pronounced sentences.

What we have said with respect to the sequence of sentences has equal application with regard to the clarification of the total time to be served, concerning which there was some confusion at the time of sentencing. * * *

II. *Young* v. *United States*, No. 184

On October 31, 1952, petitioner and his wife were sentenced by the District Court for the District of North Dakota on pleas of guilty to all counts of two informations (Nos. 8048 and 8052) and one indictment (No. 8136) (R. (184) 5, 6, 11).[3]

The prosecuting attorney, in a statement which petitioner's attorney termed "fair and impartial" (R. (184) 9), recounted a long list of burglaries, larcenies, robberies, and escapes committed by the defendants over the years (R. (184) 7, 8), referring to petitioner

[3] The information in No. 8048, filed October 31, 1951, contained two counts charging the defendants with jointly burglarizing post-offices in North Dakota, in violation of 18 U.S.C. 2115 (R.(184)1). The amended information in No. 8052, filed on November 30, 1951, charged petitioner in one count with the interstate transportation of a stolen vehicle, in violation of 18 U.S.C. 2312 (R.(184)2). The indictment in No. 8136, filed on September 27, 1952, contained three counts, the first charging the defendants with jointly transporting a stolen vehicle in interstate commerce, in violation of 18 U.S.C. 2312; the second charging petitioner, and the third, his wife, with escape from custody, in violation of 18 U.S.C. 751 (R.(184)3–4).

as having been "listed by the Federal Bureau of Investigation as one of the ten most wanted men" (R. (184) 8), and recommending that both defendants "be given the maximum penalty under the law. In the case against Young, that means 25 years. In the case against Mrs. Young, it means 20 years" (R.(184)9).

The sentencing judge, having declared that he was "of the opinion that the recommendation of the District Attorney is justified" (R. (184) 11), imposed sentence on the defendants as follows (R. (184) 11–12):

> Thomas Edward Young, it is the sentence of this Court that in case No. 8048, as to Count 1 you be confined * * * for a period of five years; that you also be confined on Count 2 for a period of five years. Margaret Rita Young, it is the sentence of this Court that you be confined * * * under Count 1 for a period of five years and under Count 2 for a period of five years.
>
> As to case No. 8052, in which you, Mr. Young, are the sole defendant, * * * it is the sentence of the Court that you be confined for a period of five years.
>
> As to case No. 8136, on Court [sic] 1, which charges the two of you jointly, it is the sentence of the Court that each of you be confined for a period of five years. On Count 2, you, Thomas Edward Young, it is the sentence of the Court that you be confined for a period of five years. On Count 3, it is the sentence of the Court that you, Margaret Rita Young be confined for a period of five years.

> It is the order of this Court that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years and for you, Mrs. Young, a total sentence of 20 years.

On the same day as sentence was imposed, written Judgments and Commitments[4] were signed by the sentencing judge (R. (184) 13–19). In No. 8048, the Judgment and Commitment with respect to petitioner provided that the five-year sentences on each count were "to run consecutively with each other" (R. (184) 13). In No. 8052, in which petitioner was the sole defendant, the Judgment and Commitment, after setting forth the sentence, provided that it was "to commence at the expiration of the sentence * * * in Criminal Case No. 8048" (R. (184) 15). In No. 8136, the Judgment and Commitment with respect to petitioner, after setting forth the two five-year sentences imposed against him under Counts 1 and 2 of the indictment, provided that the sentences on the two counts were "to run consecutively" and that they were "to commence at the expiration of the sentence * * * in Criminal Case No. 8052" (R. (184) 16).

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[4] Each Judgment and Commitment was the formal "judgment of conviction" referred to in Rule 32(b), F.R. Crim. P., and was prepared in the form suggested in Form 25, Appendix of Forms, F.R. Crim. P. Compare the Statement, *supra*, p. 7.

On June 5, 1959, while both petitioner and his wife were confined in California institutions (R. (184) 20), they filed a motion in the sentencing court[5] to correct the Judgments and Commitments "to reflect that [all] the sentences imposed thereupon commenced to run on the date of imposition * * *" (R. (184) 20). The District Court denied the motion, concluding that the Judgments and Commitments "did no more than reflect the clearly expressed sentences imposed" (R. (184) 25); that they contained "no departure in any matter of substance" from the sentences imposed in open court (R. (184) 25); that "[t]he sentences were handed down in open court, case by case, and count by count" (R. (184) 28); and that it was the "clear and obvious intention and direction of the Court, as disclosed by the official proceedings in court and without reference to the judgments and commitments signed thereafter, that the sentences imposed upon Young and his wife were to be served in the order pronounced" (R. (184) 28).

An appeal was taken by both petitioner and his wife to the Court of Appeals for the Eighth Circuit (R. (184) 30). That court affirmed, holding that in dealing with each proceeding in its chronological order, and with each separate count in its numerical sequence, the sentencing judge's oral pronouncement left no ambiguity as to the order in which the sen-

[5] Although the motion was signed only by petitioner (R. (184) 20), the district court treated it as "having been made by both defendants" (R. (184) 21).

tences were to be served (R. (184) 32, 33), and that, as the trial court held, the Judgments and Commitments did not depart, except in form, from the oral pronouncement (R. (184) 33). The Court of Appeals also rejected a contention that the language in the Judgment and Commitment in No. 8048, stipulating that the sentences on the two counts contained therein were "to run consecutively with each other" (R. (184) 13, 17), was inoperative, and that these sentences therefore had to be regarded as concurrent (R. (184) 36).

SUMMARY OF ARGUMENT

I

There is no claim in the present cases that the sentencing courts in their oral pronouncements did not intend to impose consecutive sentences, but rather that those courts failed to specify the exact sequence in which the sentences were to be served so that the only alternative is to infer that the sentences were to run concurrently. According to *United States* v. *Daugherty*, 269 U.S. 360, 363, however, the lack of an express specification of the sequence of service of consecutive sentences in the sentencing judge's oral pronouncement does not render the sentences concurrent as a matter of law when the intent of the court as to the sequence can be ascertained by the "reasonable and natural implication from the whole entry."

The present cases fall squarely within the rationale of *Daugherty* since the oral pronouncements of the sentencing judges were sufficiently clear to impose

consecutive sentences to be served in the same sequence as the numerical order of the proceedings, particularly since each of the judges took up each proceeding, and, in *Young,* each count within each proceeding, separately in numerical order, and meted out punishment on them in the same order in which they were taken up.

The distinction urged by petitioners between sentences imposed on separate counts of a single indictment or information—a situation which, they concede, falls within the *Daugherty* rationale—and sentences imposed on multiple indictments or informations—a situation which, they aver, falls outside the scope of *Daugherty*—is a distinction without a difference, which has not been countenanced in the federal courts and which this Court should reject as artificial. Petitioners attempt to support this artificial distinction by urging that, because multiple counts of a single indictment denote various facets of the same transgression, the imposition of consecutive sentences on such counts may gain some illumination from the sequence of the counts in the indictment, but that there can be no such discernable relation among several indictments. That contention, however, fails to take account of the fact that whether or not the underlying offenses grew out of the same transaction is irrelevant to whether or not the order in which the sentences are to be served was sufficiently indicated. Moreover, the Federal Rules of Criminal Procedure do not supersede the *Daugherty* standard by imposing more exacting standards on the oral pronouncement of sentence.

II

In a habeas corpus proceeding, such as *Payne,* the accuracy of the written Judgments and Commitments cannot be impeached, and the habeas corpus court is therefore without power to ascertain whether there is a variance between the written judgment and the oral pronouncement of sentence. Moreover, since the sole question in both cases is what the courts intended when they imposed sentence, the written Judgments and Commitments may at least be examined to cast light upon, and clarify any ambiguity in, the judges' intention in their oral pronouncements of sentence, much as legislative history is examined to help interpret the language of a statute. Use of the written Judgments and Commitments does not in any way violate a prisoner's right to be "present * * * at the imposition of sentence * * *."

When the written Judgments and Commitments in these cases are compared to the oral pronouncements of sentence, they confirm the intent of both sentencing judges to have the sentences served consecutively in order of their imposition, both with respect to the separate indictments and informations in *Payne* and *Young,* and with respect to the separate counts in the indictment and information in *Young.*

III

In the event that the Government's substantive contentions are rejected, this Court should not direct that the prisoners be released. Since the sole question is whether the judges sufficiently specified the sequences

in which the consecutive sentences were to be served, the proper remedy would be to have the appropriate courts determine the intent of the sentencing judges with respect to the sequence in which the consecutive sentences were to be served, and to correct the written Judgments and Commitments, if necessary.

ARGUMENT

I

THE ORAL PRONOUNCEMENTS FROM THE BENCH UNAMBIGUOUSLY IMPOSED CONSECUTIVE SENTENCES AND ADEQUATELY DISCLOSED THE RESPECTIVE SENTENCING COURTS' INTENT AS TO THE SEQUENCE OF SERVICE

A. *Both* Payne *and* Young *come within the standard established in* United States *v.* Daugherty

The standard for determining whether sentences which have been ordered by the sentencing judge to run consecutively are sufficiently clear as to the sequence in which they are to be served was announced in *United States* v. *Daugherty*, 269 U.S. 360. The district court in *Daugherty* had sentenced the defendant "for the term of five (5) years on each of said three counts * * *. Said term of imprisonment to run consecutively and not concurrently." *Id.* at 361. The court of appeals reversed, holding that the sentences should be given concurrent effect only, because of the absence of an express specification of the sequence in which the sentences were to be served. *Id.* at 362. In reversing the judgment of the court of appeals, this Court held that the lack of an express specifica-

tion of the sequence of service does not render sentences concurrent as a matter of law when the intent of the court as to the sequence can be ascertained by the "reasonable and natural implication from the whole entry." *Id.* at 363. Asserting that "[s]entences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them," the Court cautioned that "[t]he elimination of every possible doubt cannot be demanded," and went on to infer the sequence of service from the numerical order of the counts in the indictment, adding that the words " 'said term of imprisonment to run consecutively and not concurrently' " were "not consistent with a five-year sentence." *Ibid.*

In the present cases, it is equally "not consistent" with the actual intent of the sentencing courts to find that the directives of those courts must be considered to have imposed concurrent sentences. Petitioner in *Young,* however, insists that the only inference from the "sentencing pronouncement" is that it "authorizes no more than *five* years of imprisonment" (Pet. Br. (184) 14, fn. 11). But the sentencing court in *Young* ordered that the "sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years * * *" (R. (184) 12).

Petitioner in *Payne* similarly insists that the only inference from the "sentencing pronouncement" is that it "authorizes no more than two years of imprisonment" (Pet. Br. (180) 22, fn. 23). But the

sentencing court in *Payne* expressly indicated that "all the different indictments will be consecutive" (R. (180) 7). It then summed up: "Did you get it, Mr. Thrasher [defense counsel]? 10,676, one year; 10,677, two years; 10,678, two years; 10,679, two years; 10,680, two years; 10,681 is two years; 10,682 is two years, *consecutive as to all cases*" (R. (180) 8) (emphasis added). When a question arose as to the total number of years imposed by the sentences, the following colloquy occurred (R. (180) 7–8):

> THE COURT: * * * Now, let's see, that is thirteen years, is that correct?
>
> GEN:L[sic] MEEK [the prosecuting attorney]: I figure twelve.
>
> Mr. THRASHER [defense counsel]: I figure twelve.
>
> CLERK: Thirteen is right.
>
> THE COURT: I figure fourteen. * * *

Obviously, in such circumstances, the court could hardly have intended to impose a sentence of only two years, for the question under discussion was whether the aggregate sentence was to be twelve, thirteen, or fourteen years. It was thus understood by all concerned that the court had imposed consecutive sentences.[6]

Presumably, petitioners cannot argue that the sentencing courts did not actually intend to impose

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[6] It should be stressed that the issue before this Court is not whether the total sentence imposed upon petitioner was twelve years, thirteen years, or fourteen years, but rather whether petitioner has a right to be released after serving only *two* years.

consecutive sentence; rather, they argue that, since the Courts failed to specify the exact sequence in which the sentences were to be served, the only alternative is to infer that the sentences were to run concurrently. But, in both cases, there is far more evidence of each judge's intent with respect to the sequence of service of the sentences than in *Daugherty,* where the sentencing judge merely imposed a term of "five (5) years on each of said three counts." 269 U.S. at 561. Thus, in each case there was a numerical sequence of the indictments and informations; each district court took up each proceeding in numerical order; each court then identified the proceeding by reciting its individual docket number, and pronounced sentence in that proceeding before taking up the next proceeding for consideration (R. (180) 7, 8; R. (184) 11). In addition, the court in *Young* took up each count in each proceeding in numerical order and imposed sentence on that count before considering the next count (R. (184) 11). In a word, as the district court in *Young* correctly observed, the sentences were announced "case by case, and count by count" (R. (184) 28). Finally, in *Payne,* the sentencing court, upon reaching the numerically final proceeding, identified it as "the last No. 10,682" (R. (180) 7), and immediately after imposing sentence in that proceeding declared that "all the different indictments will be consecutive" (R. (180) 7). The court then recapitulated, again taking up the proceedings in numerical order. It is thus clear from the record in each case that the "reasonable and natural implica-

tion from the whole entry" (*Daugherty,* 269 U.S. at 363) is that the intent of each sentencing court was to impose consecutive sentences to be served in the same sequence as the order in which they were imposed (see, *e.g.,* R. (184) 28). Indeed, no other implication can reasonably be made, for it would have made no sense for either of the sentencing judges to intend that the second, third or fourth sentence in order of imposition be served first, and the first last, or for the judge to intend any other sequence of service than that corresponding to the sequence in which the sentences were in fact imposed.

B. *There is no tenable distinction between sentences imposed on separate counts of a single indictment and sentences imposed upon separate indictments or informations*

1. Petitioners recognize that the *Daugherty* opinion "appears to permit the imposition of multiple consecutive sentences * * * despite the lack of * * * an express specification" of the sequence of service, where the sequence is indicated by the "'reasonable and natural implication' of the judge's pronouncement," and the sentences are imposed on "counts of a single indictment" (Pet. Br. (180) 13; see Pet. Br. (184) 10). They urge, however, that there is a significant distinction between sentences, imposed on separate counts of a single indictment, and sentences, such as those involved here, imposed upon separate indictments or informations. To support such a distinction, petitioners cite *United States* v. *Patterson,* 29 Fed.

775 (C.C.D.N.J.), decided in 1887—in which Mr. Justice Bradley, sitting on circuit, decided that a sentence "for the term of five (5) years upon each of the three indictments * * *, said terms not to run concurrently * * *" (*id.* at 776) was effective only to impose a term of five years—and claim that the *Daugherty* opinion "carefully distinguished and preserved the *Patterson* rationale" (Pet. Br. (180) 13).

Although the *Daugherty* opinion distinguished the *Patterson* case, it did not approve the *Patterson* rationale; failure of a court expressly to disapprove a decision does not compel an inference of approval. More fundamentally, with respect to the issue in the present cases, no tenable distinction can be drawn between sentences imposed upon separate indictments or informations and sentences imposed upon separate counts of the same indictment. As petitioners apparently realize (Pet. Br. (180) 14, fn. 13), since the *Daugherty* case was decided, many federal courts have either explicitly or implicitly recognized the artificiality of such a distinction, and accordingly have held that the *Daugherty* rationale governs sentences imposed in separate proceedings as well as on separate counts.[7] No decision to the con-

[7] *Barker* v. *Looney*, 261 F. 2d 616 (C.A. 10); *Ward* v. *United States*, 256 F. 2d 179 (C.A. 10); *Ward* v. *Looney*, 256 F. 2d 180 (C.A. 10); *Mills* v. *Hunter*, 204 F. 2d 468, 470 (C.A. 10); *Ziebart* v. *Hunter*, 177 F. 2d 847 (C.A. 10); *Seltenrich* v. *Sigler*, 228 F. 2d 615 (C.A. 5), certiorari denied, 350 U.S. 1001; *Kennedy* v. *Reid*, 249 F. 2d 492, 495 (C.A.D.C.); *Cole* v. *Sanford*, 48 F. Supp. 729 (N.D. Ga.).

trary has been found.[8] As the court of appeals said in *Young*, the mere fact that this Court distinguished *Patterson* in *Daugherty* hardly constitutes "any implied recognition or approval * * * of an absolute and artificial rule that, no matter what a court may have done and said in imposing sentences on separate indictments, such sentences cannot at all have any consecutive or successive operation, unless the court expressly specifies the sequence in which they are to be served" (R. (184) 35).

2. But even if the principle of the *Patterson* case had been adopted by this Court in *Daugherty*, it would not follow that on the facts of the present cases the *Patterson* rationale would apply. In *Patterson* there is no indication that the sentencing court took up each proceeding separately and in its numerical order; identified each proceeding by its individual docket number; or pronounced sentence in that pro-

[8] The court below in *Payne* cited *Puccinelli* v. *United States*, 5 F. 2d 6 (C.A. 9) as "authority for the view" that where the consecutive sentences pertain to different proceedings, as distinguished from different counts in the same proceeding, "a more precise specification of the order of sentences must be indicated than is to be found in the instant oral sentences" (R. (180) 18). In the *Puccinelli* case, which was decided before *Daugherty*, the sentencing court did not indicate whether the sentences were to be served consecutively or concurrently. The court later amended its judgment to provide that they were to be served consecutively. The sole issue was the validity of the amended judgment. The court's dictum (5 F. 2d 6, 7) as to the necessity of an express specification of the sequence of service cited, in addition to *Patterson*, the court of appeals opinion which was reversed by this Court in *Daugherty*.

ceeding before taking up the next proceeding for consideration. Thus, *Patterson* would have to be considerably extended in scope to support petitioners here. The result of such an extension, however, would be to ignore the clear and concrete evidence of the sentencing court's intent in each of the present cases, and to render the so-called *Patterson* rule even more arbitrary and unpersuasive.

3. Petitioners attempt to support the artificial distinction between multiple counts in a single indictment and multiple indictments or informations by asserting that, because multiple counts in a single indictment generally denote various facets of a single transgression, the imposition of consecutive sentences on such counts, "even if lacking meticulous precision, may gain some illumination from the sequence or contents of the indictment's several counts." They go on to urge that "[n]o comparable clarification * * * can result from multiple indictments consolidated for sentencing under Rule 20 of the Federal Rules of Criminal Procedure, where no discernible relation among the several indictments exists" (Pet. Br. (180) 14; see Pet. Br. (184) 10, and fn. 8).

This argument is wholly untenable. Whether or not the underlying offenses grew out of the same transaction is completely irrelevant to whether or not the order in which the sentences are to be served was sufficiently indicated. Petitioners' distinction presupposes that where the offenses grow out of a single transaction they are related in a manner which is significant for purposes of determining the sequence in which

the sentences imposed thereon should run. This presupposition in turn assumes (1) that from a relationship among offenses there may be implied a relationship among sentences imposed on such offenses, and (2) that the relationship among the offenses is chronological. The first assumption has no foundation whatever. The second assumption is hardly acceptable because the relationship among offenses which grow out of a single transgression derives from the circumstance that the offenses "are based on the same act or transaction" (Rule 8(a), F.R. Crim. P.). Moreover, petitioners err in assuming that multiple counts in a single indictment denote only various facets of a single transgression, for multiple "offenses may be charged in the same indictment or information in a separate count for each offense" even if the offenses "are of the same or similar character or are based * * * on two or more acts or transactions connected together or constituting parts of a common scheme or plan" (*ibid.*). In short, petitioners' distinction between sentences imposed upon counts of a single indictment and sentences imposed upon separate indictments or informations has no significance.

C. *The Federal Rules of Criminal Procedure do not supersede the* Daugherty *standard by imposing more exacting standards on oral pronouncements of sentence*

Petitioners argue, finally that the "wider rationale" of the *Daugherty* opinion appears to have been "superseded by the more exacting standards codified

two decades later by the Federal Rules of Criminal Procedure * * *" (Pet. Br. (180) 14; see Pet. Br. (184) 10). As the sole evidence of this alleged codification of "more exacting standards," they cite Form 25—Judgment and Commitment, Appendix of Forms, F.R. Crim. P., which suggests in footnote 4 to the form that, in the case of consecutive sentences, the entry on the Judgment and Commitment should contain language specifying "when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence * * *."

Petitioners do not dispute that the Judgments and Commitments in the present cases are in accord with Form 25. They say, however, that, although, under Rule 58, F.R. Crim. P., Form 25 is merely "illustrative and not mandatory," the Form nevertheless reflects an "authoritative judgment" that greater specificity is now appropriate in the *oral* pronouncement of sentence (Pet. Br. (180) 15; Pet. Br. (184) 10). From this it follows, petitioners say, that an illustrative form suggesting meticulous precision in the written Judgment and Commitment should be held to be "*mandatory*" under the present rules (Pet. Br. (180) 15), requiring the same degree of precision in an oral pronouncement from the bench, and therefore as in effect overruling the considered determination of this Court in *Daugherty*. In light of the many courts of appeals' decisions which have applied the *Daugherty* standard since the adoption of the Rules of Criminal Procedure (see footnote 7, *supra*, p. 22), petitioners' contention with respect to the present cases is clearly

without merit. A "stricter standard" than *Daugherty* has not been demanded. *Butterfield* v. *Wilkinson*, 215 F. 2d 320, 322 (C.A. 9).

II

THE WRITTEN JUDGMENTS AND COMMITMENTS ARE DISPOSITIVE IN *PAYNE*, OR IF NOT, ARE, AS IN *YOUNG*, AT LAST CLEAR EVIDENCE OF THE SENTENCING COURT'S INTENT TO HAVE THE SENTENCES SERVED CONSECUTIVELY IN ORDER OF THEIR IMPOSITION

Petitioners argue that the Judgments and Commitments have "no probative value" (R. (180) 17) and cannot be used to "amplify the judge's pronouncement of sentence" (Pet. Br. (180) 18; see Pet. Br. (184) 13) because, if they were to be used, that use would violate the provision in Rule 43, F.R. Crim. P., requiring a defendant to "be present * * * at the imposition of sentence * * *," and the provision in Rule 32(a), F.R. Crim. P., requiring the defendant to be afforded "an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment," since in reality the Judgments and Commitments were "prepared *ex parte*" (R. (180) 18).

A. *In the habeas corpus proceeding in* Payne, *the accuracy of the written Judgments and Commitments cannot be impeached*

Whatever may be the validity of petitioners' argument with respect to *Young*, it has no validity in *Payne*, where petitioner instituted a habeas corpus proceeding in the District Court for the Northern District of California to impeach the formal records

of the District Court for the Eastern District of Tennessee (R. (180) 3). For, in a collateral proceeding, there exists an "irrebuttable presumption" that the "judgment entered upon the records of the court" is true and "says what it was meant to say." *Hill* v. *United States ex rel. Wampler,* 298 U.S. 460, 464. In such a proceeding, therefore, the court is without power to ascertain whether there is a variance between the written judgment and the oral pronouncement of that judgment (*ibid.*); to accept an interpretation of the sentence which is "contradicted by the plain words of the recorded judgment" (*Greene* v. *United States,* 358 U.S. 326, 329); or to inquire as to whether the written judgment is the true judgment of the trial court (*Hill* v. *United States ex rel. Wampler, supra; Riddle* v. *Dyche,* 262 U.S. 333, 336; *Chapman* v. *United States,* 247 F. 2d 879, 881 (C.A. 6), certiorari denied, 356 U.S. 945; *Clark* v. *Memolo,* 174 F. 2d 978, 980–981 (C.A. D.C.)).

It is true that the Court of Appeals in *Payne,* relying on *Butterfield* v. *Wilkinson,* 215 F. 2d 320 (C.A. 9), held that "[h]abeas corpus * * * is the proper remedy" (R. (180) 15, fn. 1). But the reliance on *Butterfield* was misplaced, for the prisoner in that case, far from seeking to impeach the formal records of the sentencing court, rested his claim to release squarely upon such records. Since no issue of collateral impeachment of the sentencing court's records was involved, habeas corpus was the appropriate remedy. Here too, if petitioner in *Payne* had been content not to impeach the written judgment, habeas

corpus would have been the appropriate remedy, but relief would have properly been denied by the district court because, as will be shown (*infra*, p. 31), the Judgments and Commitments unambiguously set forth the sequence in which the consecutive sentences were to be served, as well as the length of the aggregate sentence. If, on the other hand, petitioner had wanted to call the validity of the written judgments into question, he should have filed a motion in the sentencing court, under Rule 36, F.R. Crim. P., invoking that court's inherent power to correct its own record (see *Hill* v. *United States ex rel. Wampler*, *supra*, 298 U.S. at 464), for it is the "trial court alone [which] has the power to make this record conform to the truth, if it does not do so" (*Meredith* v. *Gough*, 168 F. 2d 193 (C.A. 5), certiorari denied, 335 U.S. 873). Such a procedure was followed in *Young* (R. (184) 20).

B. *Even if the accuracy of the written Judgments and Commitments in both cases may be impeached by resort to the oral pronouncements of sentence, nevertheless the Judgments and Commitments may at least be used as evidence of the sentencing courts' intent*

Even if the courts in both cases had power to look to the oral pronouncements of sentence, since the sole question was what the sentencing courts intended when they imposed sentence, the courts below at least had the right to examine the written Judgments and Commitments to cast light upon, and clarify any ambiguity in, the judges' intention, much as legislative

history is examined to aid in interpreting the language of a statute. The Judgments and Commitments furnish at least "probative evidence" that the sentences as set forth therein conformed with the intent of each of the judges, particularly since the Judgments and Commitments in both cases were signed by the sentencing judges on the very same day that the sentences were imposed in open court (see Appendix, *infra*, pp. 39-48; R. (184) 13-19). Use of the written Judgments and Commitments to help understand the oral sentences could hardly raise any problems under Rules 32(a) and 43, F.R. Crim. P., since both petitioners were "present * * * at the imposition of sentence * * *" in open court, were afforded the "opportunity to make a statement in * * * [their] own behalf * * *," and were denied no substantive right when the sentences were imposed.

C. *With respect to the separate indictments and informations, the written Judgments and Commitments clearly confirm that the judges intended to have the sentences served consecutively in the order of their imposition.*

Petitioners rely heavily (Pet. Br. (180) 19) on this Court's declaration in *Hill* v. *United States ex rel. Wampler, supra,* 298 U.S. at 465, that "[a] warrant of commitment departing in matter of substance from the judgment back of it is void."[9]

[9] In 1936, when the *Hill* case was decided, however, the "warrant of commitment," or "mittimus," was a different document from the "judgment." The mittimus represented authority for commitment, while the "judgment," which preceded the

In the present cases, however, there was hardly any departure, or at least any departure of substance, between the oral pronouncements of sentence and the written Judgments and Commitments with respect to the separate indictments and informations. In *Payne*, the Judgment and Commitment in Criminal Case No. 10,677 specified that the sentence was "to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,676" (Appendix, *infra*, p. 41). Similarly, each Judgment and Commitment in Criminal Cases Nos. 10,678 through 10,682, inclusive, provided that the sentence therein contained would commence at the expiration of the sentence imposed that day in the case immediately preceding it numerically (Appendix, *infra*, pp. 42, 44, 45, 47, 48). In *Young*, the Judgment and Commitment in Criminal Case No. 8052 provided that the sentence therein was "to commence at the expiration of the sentence * * * in Criminal Case No. 8048" (R. (184) 15), and the Judgment and Commitment in Criminal Case No. 8136 required the sentence therein "to commence at the expiration of the sentence * * * in Criminal Case

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mittimus in point of time, was the clerk's notation of the sentence in the minutes, which were later signed by the judge as a whole. Under present-day procedure, however, the "judgment" and the warrant of commitment are actually one and the same document. See Form 25, Appendix of Forms, F.R. Crim. P. The issue in the *Hill* case involved comparison of the warrant of commitment with the judgment, whereas the issue in the present cases involves comparison of the judgment with the oral pronouncement of sentence. See *Miller* v. *Sanford*, 161 F. 2d 291, 293 (C.A. 5); *Meredith* v. *Gough*, *supra*, 168 F. 2d 193 (C.A. 5).

No. 8052" (R. (184) 16). Thus, at least with respect to the separate indictments and informations in *Payne* and *Young*—as distinguished from the separate counts of the indictment and information in *Young*—the written Judgments and Commitments confirm the intent of both sentencing judges to have the sentences served consecutively in the order of their imposition. Petitioners themselves do not dispute this contention (*e.g.*, R. (180) 17).

D. *With respect to the separate counts in the indictment and information in* Young, *the written Judgments and Commitments similarly confirm the judge's intention*

It is clear from the written Judgments and Commitments in *Young*, that the judge intended to impose consecutive sentences on each count of the information and indictment, the sentences to run in order of their imposition. Thus in Criminal Case No. 8048, five-year sentences were imposed in order on each count in the Judgment and Commitment, which were "to run consecutively with each other" (R. (184) 13); and in Criminal No. 8136, five-year sentences were similarly imposed in order on each count in the Judgment and Commitment, which were "to run consecutively" (R. (184) 16).

Even petitioners admit that *Daugherty* "appears to permit the imposition of multiple consecutive sentences * * * despite the lack of * * * an express specification" of the sequence of service, where the sequence is indicated by " 'reasonable and natural im-

plication'," and the sentences are imposed on "*counts of a single indictment*" (Pet. Br. (180) 13 (emphasis added); see Pet. Br. (184) 10). But petitioner in *Young* suggests that "[t]he uncertainty left by the judge's directive was compounded by the obscure Judgment and Commitment in Case No. 8048 ordering the two sentences 'to run consecutively *with* each other' " (Pet. Br. (184) 11), for, petitioner insists, "separate sentences cannot be served * * * 'consecutive with each other' " (Pet. Br. (184) 11, fn. 9).

Although, to be sure, " '[c]onsecutive with' may be infelicitous * * *, [or] offend purists in the art of using prepositions idiomatically * * *, it is not a riddle. It is not illogical. It is not uncertain. It is not ungrammatical. American-English has wide play in the joints, and a predilection for a particular preposition to express a relationship may go against usage if the choice of preposition results in meaningful language." *Fulton* v. *United States*, 250 F. 2d 281, 282 (C.A. 5). As the court observed in *Hiatt* v. *Ellis*, 192 F. 2d 119, 120 (C.A. 5): "The word 'consecutive' * * * denotes 'following in a train, succeeding one another in a regular order'. The word 'with' * * * denotes primarily 'a relation of contact or association'. * * * It would be difficult to choose two words better able than the words employed here to put in brief compass the idea of cumulative service, the service of one sentence following in the train of, succeeding, the other sentence referred to." Accord, *Sutton* v. *United States*, 266 F. 2d 529 (C.A. 5);

See *Lipscomb* v. *Madigan*, 224 F. 2d 410 (C.A. 9), certiorari denied, 350 U.S. 939.[10] Moreover, when the written Judgment and Commitment in Criminal Case No. 8048 is read in the context of (1) the oral pronouncement of sentence, (2) the written Judgments and Commitments as they pertain to the separate indictment and informations, (3) the written Judgment and Commitment in Criminal Case No. 8136, which stated that the sentences on the two counts were "to run consecutively," and (4) the *Daugherty* standard, it is impossible to find, in the words of the district court in *Young*, either "serious uncertainty" or "uncertainty in any respect" (R. (184) 28). But even if there were "uncertainty," the proper remedy would be to have the written Judgment and Commitment corrected to effectuate the in-

[10] It is true that in *Bledsoe* v. *Johnston*, 154 F. 2d 458, 459 (C.A. 9), certiorari denied, 328 U.S. 872, upon which petitioner relies, the court stated in dictum that approximately the same language as that used in the present case was ineffective to create consecutive sentences. Later, however, the Ninth Circuit effectively overruled this dictum. *Butterfield* v. *Wilkinson*, 215 F. 2d 320, 322 (C.A. 9); *Henry* v. *Madigan*, 241 F. 2d 659, 660 (C.A. 9).

Biddle v. *Hall*, 15 F. 2d 840 (C.A. 8), upon which petitioner also relies, is wholly inapplicable. In that case sentences of one year were imposed in each of two cases to run "from this date" and "not to run" concurrently with the sentence imposed in the other case. The court of appeals held that it was "impossible to reconcile the provision in each sentence, that the term began on the day thereof, with the succeeding clause, that the sentence in each case was not to run concurrently with the sentence in the other" (*id.* at 841), and resolved the conflict in the prisoner's favor.

tent of the sentencing court to impose consecutive sentences in proper order, as reflected in the court's oral pronouncement. Accord, *Bledsoe* v. *Johnston*, 154 F. 2d 458 (C.A. 9), certiorari denied, 328 U.S. 872.

CONCLUSION

For the foregoing reasons, the judgments of the courts of appeals should be affirmed.

In the event, however, that this Court should reject our contentions, it would neither be consistent with sound public policy nor necessary for the protection of petitioners' rights to direct that they be discharged after serving but a fraction of their aggregate terms of imprisonment, especially since Payne had committed "quite a serious series of violations" (R. (180) 6), and Young "was listed by the Federal Bureau of Investigation as one of the ten most wanted men" (R. (184) 8).[11]

Since there can be no doubt of the sentencing courts' intent in both cases to impose consecutive sentences (R. (180) 7, 8; R. (184) 12), the only appropriate remedy in *Young*—if petitioners should prevail—would be to remand with instructions to the district court (1) to determine the intent of the sentencing judge with respect to the sequence in which the consecutive sentences were to be served, and (2) to cor-

[11] "The Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner." *Bozza* v. *United States*, 330 U.S. 160, 166–167; accord, *King* v. *United States*, 98 F. 2d 291, 296 (C.A. D.C.).

rect the written Judgments and Commitments, if necessary.[12]

With respect to *Payne*, if the Court should conclude that the issue had been properly raised in a habeas corpus proceeding, then it should remand to the district court "to dispose of the matter as law and justice require" (28 U.S.C. 2243), as the court would then have the power to do, and that disposal would be to direct that petitioner be returned to the sentencing court for the type of judicial determination suggested in *Young*.[13]

Such dispositions would not violate the Fifth Amendment's prohibition against double jeopardy. To be sure, as the petitioners assert, the sentencing court is "barred from sentencing petitioner anew so as to increase his sentence after its original imposition and start of service * * *" (Pet. Br. (180) 22,

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[12] Cf. *Downey* v. *United States*, 91 F. 2d 223, 233 (C.A. D.C.), where the sentences as entered by the clerk were ambiguous as to whether they were to run concurrently or consecutively. The court later corrected the record on the government's motion so as to make the sentences run consecutively. On appeal, the court of appeals held that, providing a fair judicial proceeding were held, such correction could be made. See also *Buie* v. *King*, 137 F. 2d 495 (C.A. 8).

[13] Cf. *In re Bonner*, 151 U.S. 242, 259–262, where this Court, on a petition for habeas corpus, held that the prisoner was being detained under a void sentence, but elected to "delay the discharge of the petitioner for such reasonable time as may be necessary to have him taken before the court where the judgment was rendered, that the defects for want of jurisdiction which are the subject of complaint in that judgment may be corrected." *Id.* at p. 261. See also *Wilson* v. *Bell*, 137 F. 2d 716, 719 (C.A. 6); *Price* v. *Zerbst*, 268 Fed. 72 (N.D. Ga.).

fn. 23; Pet. Br. (184) 14, fn. 11). But no *increase* in sentence would take place under the suggested procedure, since the only possible question concerns the sequence in which the consecutive sentences were intended by the sentencing courts to be served. Resolution of that question could not result in an increase in either of the petitioners' cumulative sentences.

Respectfully submitted.

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FEBRUARY 1961.

APPENDIX

(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENN., SOUTHERN DIVISION

No. 10,676

UNITED STATES OF AMERICA *v.* HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by attorney, and being advised of the nature of the charge and his rights, waived in open court prosecution by indictment and consented that the proceeding may be by information instead of by indictment.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offense of having uttered and published as true a forged, falsely made and counterfeited U.S. Money Order knowing same to be forged and falsely made; and had in his possession, with intent to utter and publish as true, falsely made, forged and counterfeited U.S. postal money orders, knowing the same to be falsely made and counterfeited, in violation of Title 18, U.S.C., Sections 500 and 494, as charged in the first and second counts of the information; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no

sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEARS, FROM AND AFTER THIS DATE, on each of the first and second counts of the Information, said sentences to run concurrently as to counts.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

* * * * *

(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

No. 10,677

UNITED STATES OF AMERICA *v.* HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by Attorney, and being advised of the nature of the charge and his rights, waived in open court prosecution by indictment and consented that the proceeding may be by information instead of by indictment.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of having forcibly broke into and entered the Compton, Illinois Post Office, with intent to commit larceny, and did steal and knowingly convert to his own use certain property of the United States which had a total value in excess of $100.00, in violation of Title 18, USC, Sections 2115 and 641, as charged in the first and second counts of the information; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS ON THE FIRST COUNT; ONE YEAR ON THE SECOND COUNT; said sentences to run concurrently as to counts and to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,676.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

* * * * *

(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

No. 10,678

UNITED STATES OF AMERICA *v.* HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by Attorney, and being advised of the nature of the charge and his rights, waived in open Court prosecution by indictment and consented that the proceeding may be by information.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of having forcibly broke into the Post Office at Nunnelly, Tennessee, with intent to commit larceny; and did steal property used by the Post Office Department, the value of which exceeded $100.00, in violation of Title 18, USC, Sections 1707 and 2115, as charged in the first and second counts of the Information; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on the first count of the information, and ONE (1) YEAR on the second count, said sentences to run concurrently as to counts and to be-

gin at the expiration of the sentence imposed this day in Criminal Case No. 10,677.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

* * * * *

(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIV.

No. 10,679

UNITED STATES OF AMERICA *v.* HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by Attorney, and being advised of the nature of the charge and his rights, waived in open court prosecution by indictment and consented that the proceeding may be by information instead of by indictment.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of having forcibly broke into a building used in part as a Post Office at Hurricane Mills, Tennessee, with intent to commit larceny; and did steal property used by the Post Office Department, the value of which exceeded $100.00, in violation of Title 18 USC, Section 1707 and 2115, as charged in the first and second counts of the Information; and the court having asked the

defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on the first count of the Information; ONE (1) YEAR on the second count, said sentences to run concurrently as to counts and to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,678.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

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(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

No. 10,680

UNITED STATES OF AMERICA *v.* HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by Attorney, and being advised of the nature of the charge and his rights, waived in open

court prosecution by indictment and consented that the proceeding may be by information instead of by indictment.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offense of having forcibly broke into a building used in part as the Postoffice, with intent to commit larceny and other depredations in said Postoffice, and did steal and take away therefrom a quantity of blank money order forms, a money order validating stamp and approximately the sum of Fifty-five ($55.00) Dollars in Postal Funds, in violation of Title 18, USC, Sec. 2115, as charged in the one count of the information; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced; and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on the one count of the Information, said sentence to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,679.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

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(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIV.

No. 10,681

UNITED STATES OF AMERICA *v.* HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by Attorney; and being advised of the nature of the charge and his rights, waived in open court prosecution by indictment and consented that the proceeding may be by Information instead of by indictment.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of having falsely made, forged and counterfeited a money order in the sum of $100.00, with intent to defraud; and uttered and published as true a falsely made, forged and counterfeited money order in the sum of $100.00, knowing same to be falsely made, forged and counterfeited, in violation of Title 18, Section 500, as charged in the first and second counts of the Information; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a pe-

riod of ONE (1) YEAR on each of the first and second counts of the Information, said sentences to run concurrently as to counts and to begin at the expiration of sentence imposed this day in Criminal Case No. 10,680.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

(File Endorsement and Attestation Omitted)

Judgment and Commitment (Rev. 7–52)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

No. 10,682

UNITED STATES OF AMERICA v. HARRY JOSEPH PAYNE

On this 16th day of March, 1956 came the attorney for the government and the defendant appeared in person and by Attorney, and being advised of the nature of the charge and his rights, waived in open court prosecution by indictment and consented that the proceeding may be by information instead of by indictment.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of having knowingly, willfully, unlawfully and feloniously

broke into and attempted to break into a Post Office building, with intent to commit in said Post Office building larceny and other depredation, in violation of Title 18, Section 2115, as charged in the one count of the Information; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on the one count of the Information, said sentence to begin at the expiration of the sentence imposed this day in Criminal Case no. 10,681, making an aggregate sentence of TWELVE (12) YEARS TO BE SERVED in the seven criminal cases.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LESLIE R. DARR,
United States District Judge.

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